

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
XIUFENG (LOUISA) CHEN,
(A# 096366229)

Plaintiff,

-against-

ANDREA J. QUARANTILLO, Director of New York
District Office of the U.S. Citizenship & Immigration
Services; EMILIO GONZALEZ, Director, U.S. Citizenship
& Immigration Services; and MICHAEL CHERTOFF,
Secretary, Department of Homeland security,
Defendants.

**VERIFIED COMPLAINT
IN THE NATURE OF A
MANDAMUS PURSUANT
TO 28 U.S.C. § 1361**

Case No. 07 CV 3092 (JSR)

ECF CASE

Filed April 17, 2007

-----X
Plaintiff by her counsel, John P. Foudy, Esq. does hereby show and allege to this Court as follows:

JURISDICTION and VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. 1361, a federal statute vesting in U.S. District Courts original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or an agency thereof to perform a duty owed to the plaintiff.

2. This court also has jurisdiction pursuant to 28 USC § 1331 because it arises under the Administrative Proceedings Act, 5 USC §§ 702 and 704 and the Immigration and Nationalization Act and regulations implementing it.

3. Venue is proper in this district pursuant to 28 USC § 1391(e) because plaintiff resides within the district of this court and no real property is involved.

PARTIES

4. Plaintiff Xiufeng Louisa Chen (“Chen”) a citizen of the Country of Canada, was born July 15, 1966, in the Town of Fuzhou, China, and resides with her husband John P. Foudy, a citizen of the United States who was born March 29, 1966 in the City of New York, and with her son John Joseph Foudy a citizen of the United States, who was born on May 23, 2006 in the City of New York.

5. Plaintiff was married on September 21, 2002, in the Village of Sayville, Suffolk County, State of New York and resides at No. 416 Raritan Avenue, Staten Island, State of New York.

6. Defendant Andrea J. Quarantillo is the District Director of the New York District office of the U.S. CITIZENSHIP & IMMIGRATION SERVICES (“USCIS”), service within the Department of Homeland Security, an agency of the Executive Branch of the federal government, having an office and place of business at No. 26 Federal Plaza, Borough of Manhattan, City, County and State of New York.

7. Defendant Emilio Gonzalez is the Director of the U.S. CITIZENSHIP & IMMIGRATION SERVICES (“USCIS”), service within the Department of Homeland Security, an agency of the Executive Branch of the federal government, having an office and place of business at No. 20 Massachusetts Avenue NW, Washington, DC.

8. Defendant Michael Chertoff is the Secretary of the United States Department of Homeland Security, an agency of the Executive Branch of the federal government, having an office and place of business in Washington, DC.

STATEMENT OF FACTS

9. On June 26, 2003, Petitioner Chen was granted a K-3 Visa and on June 27, 2003, she moved to the United States, and has continuously resided since then with her husband John Foudy, as husband and wife.

10. On July 1, 2003, Petitioner Chen's I-130 Application was approved and her I-485 Application to Register Permanent Residence was filed on July 8, 2003 with the USCIS Office under Defendants' jurisdiction, pursuant to 8 USC § 1255, to obtain permanent residency from plaintiff.

11. Petitioner Chen was directed by the USCIS to appear for a Bio-Metric Examination on November 29, 2003 at Hempstead New York, which she attended.

12. Subsequently, Petitioner Chen was advised on January 5, 2004 that "processing had resumed" on her case. No other status updates have even been forwarded to Petitioner Chen. Since such time, her online status has been changed only once, to state that processing of her fingerprints has been completed.

13. No adjustment of status interview has been scheduled or held with respect to Petitioner Chen's I-485 Application.

14. Since January 5, 2004 plaintiff Chen has been unable to learn the status of her application, notwithstanding that plaintiff Chen made repeated telephonic and written inquiries of the USCIS during 2005, 2006 and 2007, and visited the USCIS offices in New York City twice in 2006.

15. None of the foregoing inquiries elicited any response from the USCIS from January 5, 2004 to date, a period of over three (3) years,¹ despite plaintiff Chen's repeated inquiries.

16. To date the USCIS has failed, neglected and refused to inform plaintiff Chen of the status of her application for adjustment of status.

17. By reason of the USCIS's foregoing inordinate and unexplained delay in responding to plaintiff's request for status of her application for adjustment of status, and the meritorious nature thereof in view of her bona fide marriage to a U.S. citizen, plaintiff's life and that of her U.S. citizen husband has been placed in limbo. All privileges and immunities associated with

¹ Plaintiff received a letter, once, from the Missouri Service Center stating that her application was not at such center.

lawful permanent residence including travel outside the United States and application for certain types of employment have been withheld and denied to plaintiff Chen without reason given therefore.

18. By reason of the foregoing, the statutory provisions enacted by the United States Congress for the benefit of aliens and their U.S. spouses to seek and obtain United States lawful permanent residence and the corresponding statutory duty of the USCIS and its employees thereunder to process their petitions and applications for such statutory benefits have thus been unreasonably delayed, obviated, frustrated, nullified and unlawfully rendered unavailable to plaintiffs.

WHEREFORE, plaintiff respectfully requests that this Court make and enter an Order/Judgment/Decree pursuant to 28 U.S.C. § 1361 forthwith directing the USCIS and its Director to inform the plaintiff of the exact status of her case with the USCIS and to do any and all things necessary diligently and expeditiously to conclude their case with the USCIS in accordance with law as made and provided.

Dated: New York, New York
April 4, 2007

By: \S\ John P. Foudy
John P. Foudy (JF-7322)
Attorneys for Plaintiffs
c/o Rosner Nocera & Ragone LLP
110 Wall Street, 23rd Floor
New York, New York 10005
(212) 635-2244

TO: Andrea J. Quarantillo
Director of New York Office
U.S. Citizenship & Immigrations Services
26 Federal Plaza
New York, NY 10278

Emilio Gonzalez
Director, U.S. Citizenship
& Immigration Services
No. 20 Massachusetts Avenue NW,
Washington, DC

Michael Chertoff
Secretary, Department of
Homeland Security
Washington, DC

VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF RICHMOND)

Xiufeng Louisa Chen, being first duly sworn, does depose and say: I am a Plaintiff in the within action; I have read the foregoing Verified Complaint and know the contents thereof and the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The grounds of my belief as to all matters not stated upon my own knowledge are: statements of persons, parties, records and documents.

 /s\ Xiufeng Louisa Chen
Xiufeng Louisa Chen

Subscribed and sworn to before me this 4th
day of April, 2007

 /s\ John P. Foudy
Notary Public, State of New York
No. 02FO5027891
Suffolk County, Exp. May 23, 2010